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Financial Services

Testimony of John Barr, Deputy Superintendent
Bureau of Financial Institutions
Department of Professional and Financial Regulation
In Opposition to L.D. 1546
An Act Regarding Nondiscrimination in Financial Services
Thursday, April 27, 2023, 1:00 PM

Senator Bailey, Representative Perry, and Members of the
Committee:

My name is John Barr and I am the Deputy Superintendent for the Maine Bureau of Financial Institutions. On behalf of the Bureau and the Administration, I am here to testify in opposition to L.D. 1546, An Act Regarding Nondiscrimination in Financial Services.

L.D. 1546 proposes to create a new section of law within the Banking Code requiring financial institutions, which are defined in the bill to include all banks and credit unions, as well as insurance companies and investment service providers, to provide fair access to the financial services they offer.

The bill attempts to legislate fair access by requiring the banking, insurance, and securities industries to provide their services in a nondiscriminatory manner in the communities they serve based solely on quantitative, impartial, risk-based standards. Further, providers may not

deny services if the denial would disadvantage a person or business in various ways.

The bill also requires providers of financial services to disclose to the Bureau of Financial Institutions, and to customers denied service, when the financial institution is using nonfinancial criteria to approve or deny access to services. This might include nontraditional or subjective criteria such as: reputational risk, social risk, or environmental, social, governance scores; or diversity, equity and inclusion policies.

Because the Bureau does not supervise insurance companies or the securities industry, this testimony pertains primarily to banks and credit unions. L.D. 1546 would require banks and credit unions to open accounts and make loans in their market area on a nondiscriminatory basis. Currently, credit discrimination is prohibited against individuals under the Maine Human Rights Act and the Equal Credit Opportunity Act, which prevent discrimination based on characteristics including race, color, age or religion. The proposed bill seeks to prevent discrimination based on additional types of nonfinancial criteria.

The bill would require lending decisions to be based only on impartial credit analysis. This means that a bank or credit union must work with a business even if the bank or credit union were concerned that doing so would lead to negative publicity and harm its reputation. Further, a bank or credit union must work with a business even if the bank or credit union was concerned about how the business treated its employees or how it impacted the environment. Consider a hypothetical example of a hometown bank that does not want to be involved in an unpopular local waterfront development project. The board of directors may know that involvement will damage the bank's reputation and goodwill with the community, but this bill prevents the directors from saying no to the loan.

The Bureau opposes this bill because it has not been Maine's practice to dictate who or what a bank or credit union serves. These are business decisions left to the board of directors and management of each financial institution. Banks and credit unions pursue certain opportunities and turn down others according to their internal business planning, and the bill would interfere with this fundamental business practice.

The Bureau also notes that the prohibitions in the bill are broadly drafted and lack clarity and guidance. This complicates regulatory enforcement efforts and invites private litigation, which is allowed under the

bill. For example, as written, any denial of a loan or account could violate the proposed law because it would arguably “disadvantage” a business in some way from “competing in a market.” Thus, many denials would require regulatory review, and every denial could raise the threat of civil litigation. A business that feels disadvantaged by a loan denial could immediately sue under the bill for actual damages or cash. Worse, a business could use the law as a threat, and try to force banks into making loans to avoid litigation. This would have a chilling effect on financial services in Maine and stifle free enterprise.

The Bureau would like to bring other issues to the Committee’s attention. The bill broadly defines “financial institutions” subject to the law, placing the Bureau of Financial Institutions in charge of the regulation and enforcement of businesses it does not currently supervise, including insurance and securities firms, nationally-chartered banks, and federally-chartered credit unions. If the bill moves forward, the Bureau suggests that the committee assign enforcement responsibilities to the appropriate state agencies and understand that the Bureau of Financial Institutions does not have examination authority over nationally-chartered banks or federally-chartered credit unions.

The Bureau also notes that there is inconsistent language in the bill. The bill requires that decisions to provide financial services be based solely on impartial, quantitative standards, but then requires financial institutions to disclose their non-financial subjective standards to the Bureau and customers. These sections when read together (section 2(B) and section 3 of the bill) appear to both prohibit a practice, and then create rules to implement the prohibited activity. If moving forward with the bill, the Bureau recommends that the Committee clarify its intentions with respect to a complete prohibition of nonfinancial criteria.

Thank you for the opportunity to testify before you today. I would be happy to answer questions now or at the work session.